June 5, 2002

VIA FACSIMILE

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *United States Telecom Ass'n. v. FCC*

Dear Chairman Powell:

In the wake of last Friday's decision by the D.C. Circuit remanding the Commission's *Line Sharing Order*,[1] the Association for Local Telecommunications Services ("ALTS") and the Competitive Telecommunications Association ("CompTel") respectfully ask the Commission to ensure that ILECs continue to take steps to preserve linesharing availability during the pendancy of the Commission's Triennial Review proceeding. It is our understanding that the incumbent LECs may interpret that court decision as requiring them to provide all UNEs except the linesharing UNE while the Commission completes its Triennial Review proceeding. We are extremely concerned about the disruption that may occur if the incumbent LECs adopt that interpretation of the court's decision. ALTS and CompTel member companies provide broadband services via linesharing UNEs to tens of thousands of consumer and small business users, and hundreds of new users are signing up every day. The current uncertainty surrounding the intentions of the ILECs creates unnecessary harm to those service providers and their current and future customers.

The Commission would best serve the public interest by taking immediate steps on an interim basis to protect consumers and small businesses that seek broadband services via linesharing. We believe that seeking a stay of the mandate in the linesharing decision from the D.C. Circuit is the most efficient means of preventing disruption in the broadband sector. As the Commission has already stated publicly, the Commission will resolve the unbundling issues raised by the D.C. Circuit in the pending Triennial Review proceeding. ALTS and CompTel and their member companies will vigorously advocate their procompetitive positions to the Commission in that proceeding. In the meantime, however, the Commission must not permit ILECs to deny access to line-shared loops

[1] *United States Telecom Ass'n. v. FCC*, D.C. Cir. Cause No. 00-1015 (Consolidated with 00-1025), Decided May 24, 2002.

while the Triennial Review proceeding is underway.[2] While the Commission addresses the court's remand, maintaining the status quo – by asking the court to stay its mandate in the linesharing decision – will ensure minimal disruption in the vital broadband industry. ILECs have already deployed the necessary infrastructure to facilitate linesharing UNEs, and maintaining the status quo while the Commission considers its UNE rules will serve only to benefit consumers and small businesses that wish to continue to choose from a variety of DSL providers. It is no exaggeration to say that the failure to ensure the ongoing provisioning of line-shared loops will result in a crisis in the broadband industry, with disconnected lines by the thousands, consumer uncertainty about service availability, and an immediate and predictable decrease in the availability of DSL services. Consumers and small businesses that benefit from line-shared broadband services should not be denied such services while the Commission weighs the record and renders its final decision in the Triennial Review. ILEC refusals to continue to provision line-shared loops to CLECs would serve only to destroy consumer confidence in competitive broadband offerings and bring chaos to the broadband marketplace. The D.C. Circuit could not have intended such results, and the Commission has ample avenues to preserve the status quo, either through the pursuit of voluntary assurances from the ILECs, or through its regulatory authority to ensure minimal market disruption while its rulemaking proceeding is completed. In addition to seeking a stay from the court, the Commission should also seek voluntary agreements from the ILECs to abide by existing contractual arrangements with competitive carriers and continue to provision linesharing until the Triennial Review is complete.

ALTS and CompTel believe that the Commission reached the correct decision in the Line Sharing Order, and we are confident that the concerns of the D.C. Circuit can be addressed by preserving the obligation to provide competitors with the same network functionality that is currently provided to the ILECs' own retail broadband units. Indeed,

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[2] Verizon and SBC have already cited the DC Circuit Opinion in their effort to preclude line sharing. *See, e.g.*, *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, California PUC Rulemaking 93-04-003; *Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks*, California PUC Investigation 93-04-002, Motion of Verizon California Inc. (U-1002-C) to Suspend the Comment Period on Interim Opinion Establishing Permanent Rate For the High Frequency Portion of the Loop, at 2 ("the D.C. Circuit vacated and remanded the entire Line Sharing Order. As a result, the ILEC's obligation to provide the high frequency portion of the loop as a UNE has arguably been extinguished."). Verizon, in fact, is obligated by the commitments set forth in the Bell Atlantic/GTE Merger Order "to make available to telecommunications carriers . . . the UNEs and UNE combinations required in [the UNE Remand Order and Line Sharing Order] . . . until the date of a final, non-appealable judicial decision." *In the Matter of GTE and Bell Atlantic For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221, at para. 39 (2000); see also para. 316. *See also In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements, and Transport Under the Telecommunications Act of 1996 and the Related Indiana Statutes*, Indiana Utility Regulatory Commission Cause No. 40611-S1, Ameritech Indiana's Emergency Motion to Hold Certain Issues in Abeyance, at 4 (DC Circuit "vacated the FCC's requirement to unbundle the HFPL [('high frequency portion of the loop')], which means there is at present no requirement that Ameritech Indiana provide the HFPL in a "line sharing" arrangement").

even a casual consideration of the additional factors urged by the D.C. Circuit suggests that the Commission would be on even stronger ground by performing the requested analysis today. In the intervening time period between December 1999 and the present, the number of broadband providers has significantly declined, and consumer choices have accordingly narrowed. CompTel and ALTS respectfully urge the Commission to ensure its ability to act on the Court's remand by maintaining the status quo and ensuring that ILECs continue to provision line sharing on an interim basis consistent with the Commission's November 1999 order.

Sincerely,

/s/

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